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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

11 In re: Bankruptcy Case No. 19-30088  
12 PG&E CORPORATION (DM)  
13 -and- Chapter 11  
14 PACIFIC GAS AND ELECTRIC (Lead Case)  
COMPANY. (Jointly Administered)

### **Debtors.**

- 17     Affects PG&E Corporation
  - 18     Affects Pacific Gas and Electric  
            Company
  - 19     Affects both Debtors

MOTION TO DETERMINE IF THE  
TRUSTEE'S MODIFICATION OF THE  
CLAIM RESOLUTION PROCEDURE WAS  
APPROVED BY BANKRUPTCY COURT  
AND IF NOT SO APPROVED TO GRANT  
REQUESTED RELIEF UNDER 11 U.S.C.  
§ 105(a) and § 1142(a)  
B.L.R. § 9014-1(b)(3)

21 \*All papers shall be filed in the Lead Case, No. 19-30088 (DM)

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26	///
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28	///

INTRODUCTION

The Trustee of the Fire Victims Trust cannot supplement, amend or modify the Claim Resolution Procedure (CRP) in a material way that is inconsistent with the plan, the confirmation order, the trust agreement or the claims resolution procedure, without approval of the bankruptcy court. Confirmation Order paragraphs 2(a), 18(L).

This limitation on the Trustee's ability to modify the CRP is also stated in sections 2.2(F)(iii), and 8.3 of the Trust Agreement.

This motion is based on the contention that the Trustee did not obtain court approval for the modification of the CRP titled "BIL Eligibility Criteria," implemented on May 25, 2021. Exhibit A.

The fact that the modification, "BIL Eligibility Criteria," has a material and adverse affect on an identifiable number of claimants is shown by the effects on the claim valuation process of a commercial landlord's claim, recently determined by the Trustee.

The manner of the modification's operation, and the dramatic negative effects on a claim arising under inverse condemnation is illustrated on the Trustee determination of the Sayegh Brothers claim. Exhibit B.

The processing of the Sayegh Brothers' claim including reconsiderations, appeal to Neutral and final determination by the trustee, demonstrates that the trustee and claims administrator are well aware of California law regarding the valuation of damages to leasehold interest arising under

1 inverse condemnation. The trust contends in essence that the  
2 modification preempts California law and that this bankruptcy  
3 court approved the modification.

4 Sayegh Brothers bring this motion not as an appeal of the  
5 Trustee's determination in their case but rather as a challenge  
6 to the CRP amendment that was implemented without bankruptcy  
7 court approval.

## JURISDICTION

9           The court has jurisdiction to consider this matter  
10 pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring*  
11 *Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General  
12 Order 24 (N.D. Cal. Feb. 22, 2016), and Bankruptcy Local Rules  
13 5011-1(a) and 9014-1(b)3. This is a core proceeding pursuant  
14 to 28 USC 157(b). The court has jurisdiction pursuant to 11 USC  
15 1123(a)(4) and 105(a) to resolve unequal treatment of claims.

16 The court has jurisdiction pursuant to 11 UCS 1142(a) to  
17 resolve a claim regarding failure to follow a court order.

18 The court has jurisdiction according to §11.1(U) of the  
19 Plan, to hear and determine a dispute involving the wildfire  
20 trust, including the interpretation of the wildfire trust  
21 agreements.

## **BACKGROUND**

23           1. On November 8, 2018 the Camp Fire destroyed commercial  
24 property throughout Paradise, California terminating long term  
25 leasehold interests.

26 2. January 29, 2019 PG&E filed Chapter 11 bankruptcy.

27       3. On October 25, 2019, the debtor and others seek a  
28 determination that inverse condemnation is not applicable

1 North Bay and Camp Fires. [Dck. No. 4485.]

2       4. In response, this court sets a briefing schedule  
3 because the issue is important and affects upcoming estimation  
4 proceedings. [Dck. No. 4540.]

5       5. On November 15, 2019 the official committee of tort  
6 claimants filed an opposition brief arguing, *intra alia*, that  
7 inverse condemnation is based on constitutional principles that  
8 can't be overridden by statute or administrative agencies.

9 [Dck. No. 4773, p. 28.]

10      6. November 29, 2019 this court rules that inverse  
11 condemnation is based on the California constitution, is  
12 distinguished from negligence, and will apply to damage claims  
13 in this bankruptcy. [Dck. No. 4895.]

14      7. May 5, 2020 Adventist Health and other entities filed  
15 objections to the trust documents. Amongst these objections  
16 was the concern that without judicial review the trustee could  
17 arbitrarily modify the trust documents to the benefit or  
18 disadvantage of certain classes of claimants. [Dck. No. 7072,  
19 p. 26.]

20      8. The concern was based in part on the fact that the TCC  
21 had asked the debtor to add a statement in the debtor's  
22 disclosure statement to the effect that would permit the larger  
23 claims of business victims to be treated differently. [May 15,  
24 2020 hearing transcript, Dck. No. 7416, pages 34-35.]

25       In a response brief the Official Committee of Tort  
26 Claimants argued, "The Trust Agreement grants the Trustee  
27 discretion only so far as is necessary to insure that operation  
28 of the Fire Victims Trust is as evenhanded and efficient as

1 possible and that key decisions are subject to oversight"  
2 Response brief. [Dck. No. 7159, p. 33, line 12.]

3       9. May 26, 2020 this court issued a memorandum on the  
4 objection of Adventist Health. With respect to the concern  
5 regarding arbitrary changes, the court stated that there will  
6 be a provision in the confirmation order that the trust  
7 documents could not be modified without bankruptcy court  
8 approval. [Dck. No. 7597.]

9       10. The confirmation order dated June 20, 2020 accepted  
10 that the existing trust documents as amended do not "materially  
11 and adversely affect the treatment of holders of claims." [Dck.  
12 No. 8053, p. 8.]

13       11. On November 24, 2020 Sayegh Brothers, a commercial  
14 landlord, submitted their claim to the trust asking to be paid  
15 the fair market value of the leasehold interest taken by the  
16 Camp Fire. \$3,307,769.00.

17       12. On May 25, 2021, the trustee modified the Claims  
18 Resolution Procedure by adding the "BIL Eligibility Criteria"  
19 procedure ostensibly to control and limit claims based on  
20 negligence that could be affected by the post fire regional  
21 economy.

22       13. On July 21, 2022, the trust made its first  
23 determination of the Sayegh Brothers claim using the BIL  
24 Eligibility Criteria. The loss amount was determined on a  
25 future income prediction based on pre fire tax returns and  
26 capped at four years. (Exhibit C)

27       14. A request for reconsideration of this determination  
28 was filed October 6, 2022, making two points, 1) Because a

lease is an interest in real property, valuing this claim has  
to be done according to state law of eminent domain, and 2) The  
BIL Eligibility Criteria method of projecting future income off  
of tax returns is too speculative and unacceptable per  
California supreme court and numerous appellate court  
decisions. [Exhibit D Reconsideration Brief.]

7        15. March 3, 2023, Reconsideration Determination issued,  
8 affirming the original decision. The determination does not  
9 discuss constitutional issue or the applicability of California  
10 Eminent Domain Law. (Exhibit E)

11        16. Concerned that the claims processor was violating  
12 California law, issues related to the improper treatment were  
13 presented to the claims manager (Exhibit F), the claims  
14 administrator (Exhibit G), David Molton, Trust Attorney,  
15 (Exhibit H), the TOC, (Exhibit I), Steve Skikos (Exhibit K)  
16 [Bush Declaration and Exhibits.]

17        17. Notice of Appeal filed and brief supporting appeal  
18 filed on June 29, 2023. (Exhibit M)

18. August 15, 2023 hearing on appeal conducted via Zoom.  
First words out of the Neutral were the appeal is denied  
because the bankruptcy court approved the procedure used by the  
trust.

23        19. On September 8, 2023 trustee issued Notice of Trustee  
24 Determination. Exhibit B

**RELIEF REQUESTED**

26 If this court determines that the Trustee failed to obtain  
27 necessary court approval for using the BIL Eligibility Criteria  
28 on inverse condemnation claims; it is requested that the court

1 review the BIL Eligibility Criteria and determine if the  
2 criteria apply only to claims based on negligence and not  
3 inverse condemnation. If appropriate the court is requested to  
4 exercise its equitable power pursuant to 11 USC § 105(a) and  
5 order the Fire Victim Trust to cease using the BIL Eligibility  
6 Criteria on claims arising under inverse condemnation brought  
7 by commercial landlords based on terminated leases, and to  
8 further order the Trust to identify all claims of commercial  
9 landlords that were improperly processed according to the BIL  
10 Eligibility Criteria, and thereafter, reevaluate the damages  
11 according to California Eminent Domain Law and if necessary  
12 adjust their awards accordingly.

13 In support of this request we submit the following:

14 **ARGUMENT**

15 (A) One year after the plan was confirmed the Fire Victims  
16 Trust made unauthorized changes to the laws, and the rules and  
procedures approved in the confirmation order, for valuing  
claims.

17

18 I. BANKRUPTCY COURT HAS DETERMINED THE GOVERNING LAW

19 Some of the most important legal principles that apply to  
20 this motion have already been considered and ruled upon by this  
21 court.

22 In the period before the estimation proceedings were to  
23 begin in the District Court, PG&E joined with other parties and  
24 filed a brief challenging the application of inverse  
25 condemnation in connection with the 2015, 2017 and 2018  
26 wildfires caused by PG&E's equipment. [Dck. No. 4485.]

27 In addition to PG&E's standard arguments that have been  
28 rejected countless times by California trial and appellate

1 courts, PG&E presented a new argument contending that the  
2 Doctrine of Inverse Condemnation no longer applies because a  
3 recent decision of an administrative agency, the CPUC, could  
4 limit PG&E's ability to go to the rate payers to pay for their  
5 mistakes.

6 In response, this court set a briefing and hearing  
7 schedule in order to decide the issue for future consideration  
8 as the bankruptcy case proceeds. [Dck. No. 4540.]

9 The Official Committee of Tort Claimants (TCC) filed a  
10 brief in opposition which addressed PG&E's new argument by  
11 pointing out that inverse condemnation is based on the  
12 California Constitution, the provisions of which cannot be  
13 overridden by statute, and certainly not by an administrative  
14 agency fulfilling a statutory purpose. [Dck. No. 4773, p. 28.]

15 In ruling that the Doctrine of Inverse Condemnation would  
16 apply in this bankruptcy proceeding the court agreed with the  
17 TCC that the doctrine is based on the constitution. This court  
18 rejected PG&E's new argument as unsupported by the facts and  
19 the law.

20 Mindful of the fact that PG&E's liability is also based on  
21 negligence, the memorandum decision describes the  
22 characteristics of inverse condemnation that distinguish and  
23 set it apart from liability based on negligence.

24 The Doctrine is "rooted in the California Constitution"  
25 and is mainly a form of strict liability and as such "does not  
26 require any breach of a standard of care, a finding of  
27 negligence, foreseeability or any other similar factual  
28 finding," (citation omitted), instead the operative inquiry is

1 merely whether there was actual physical injury to real  
2 property proximately caused by a public improvement as  
3 deliberately designed and constructed." [Dck. No. 4895, pages  
4 3-4.]

5 Significantly, the doctrine's main limitation is that it  
6 mainly applies to real property damage.

7 **II. CALIFORNIA CONSTITUTION ARTICLE I, SECTION 19, AND  
CALIFORNIA EMINENT DOMAIN LAW GOVERN THIS PROCEEDING.**

8  
9 Under longstanding California law the threshold issue is  
10 whether the damage or taking for a public purpose caused a  
11 reduction in the fair market value of the property interest  
12 affected. *Eachus v. Los Angeles Railway Co.*, 103 Cal. 614,  
13 620 (1894). Thus, the substance of a claim arising under  
14 inverse condemnation is the determination of the fair market  
15 value of a property interest before and after the fire.

16 In bankruptcy proceedings, issues related to the substance  
17 of claims, such as loss of fair market value are governed by  
18 state law, *Raleigh v. Illinois Dept. Of Revenue*, 530 U.S. 15, 20  
19 (2000).

20 In this particular bankruptcy the importance of state law  
21 is further emphasized in the Trust Agreement at section 8:16.  
22 "All fire victim claims administered under the CRP and this  
23 Trust Agreement shall be evaluated under the laws of the State  
24 of California."

25 The primary function of inverse condemnation is to insure  
26 that the owners of an interest in property receive the  
27 constitutional requirement of just compensation for what was  
28 taken involuntarily.

1       Historically, there are two approaches to making this  
2 determination; (I) the undivided fee rule followed by a  
3 majority of states, proceeds on the assumption that the fair  
4 market value of the property must be determined as if the  
5 property was held by a single undivided ownership; (II)  
6 California follows the minority rule known as the divided fee,  
7 or aggregate of interest rule. CCP §1265, 010, et seq.

8       The difference between the two rules is that the undivided  
9 fee rule does not consider the enhanced value of the fee  
10 occasioned by leases appurtenant to the property. However,  
11 under the rule followed by California, a lease is an interest  
12 in the land that enhances the fair market value of the land  
13 itself and therefore leases should be valued separately. CCP §  
14 1260.220. See generally the discussion on this issue in *People*  
15 *ex Rel. Dept. Pub. Wks. v. Lynbar, Inc.* (1967) 253 Cal.App.2d  
16 870, 874-875.

17       In 1975 the legislature adopted the current Eminent Domain  
18 law. CCP §§ 1230.010, et seq. It is a comprehensive statutory  
19 scheme designed to insure that the constitutional requirement  
20 of just compensation would apply to the taking of private  
21 property for a public purpose. It codified judicial decisions  
22 that found leases to be a property interest that had to be  
23 valued in a specific way in order to determine their fair  
24 market value. CCP §§ 1235,125, 1260.220(a).

25       There are legal and practical differences between eminent  
26 domain and inverse condemnation, but these differences do not  
27 effect the issue of compensation. "All condemnation law  
28 procedure and practice is but a means to the constitutional end

1 of just compensation." *Escondido Union School District v. Casa*  
2 *Suenos de Oro, Inc.* (2005) 129 Cal.App.4th 944, 959.

3       The established rule is that the time of the taking is the  
4 time of the invasion by fire and it is that event which gives  
5 rise to the claim for compensation and fixes the date of  
6 valuation. It is the date the building burnt down, it's the  
7 date leases are terminated by operation of law. CCP §  
8 1265.110. *Merced Irrigation Dist. v. Woolstenhulme*, 4 Cal.3d  
9 478, 494 (1971).

10       In monetary terms just compensation means the property  
11 owner is to be put in as good a position pecuniarily as he  
12 would be if his property had not been taken. *Lynbar*, supra  
13 880. This principle was also raised by the TCC brief, [Dck. No.  
14 4773, p. 27, line 15.]

15       The fair market value of a leasehold interest is "the  
16 capitalized value of the reasonable net rental value  
17 attributable to the land and existing improvements," California  
18 Evidence Code § 819. *People ex rel. Department of Public Works*  
19 *v. Dunn* (1956) 46 Cal.2d 639, 641.

20       For commercial landlords the valuation procedure of § 819  
21 shows what the fair market value of their leasehold interest  
22 was worth on the day of the fire and this is the amount of the  
23 loss that must be compensated.

24 **III. THE FIRE VICTIMS TRUST CHANGES THE ACCEPTED VALUATION  
25 PROCESS**

26       The Trustee's determination (Exhibit B) shows that the  
27 loss of fair market value (\$3,307,769), is not the measure of  
28 damages, it is just the beginning of the BIL Eligibility

1 Criteria created by the Fire Victims Trust,  
2 Its application clearly expressed on the face of Exhibit  
3 "B" results in a reduction of the fair market value. In the  
4 Sayegh Brothers' claim that reduction is almost 85% of the fair  
5 market value amount, leaving only 15% of the loss as just  
6 compensation.

7 A set of policy machinations designed by the Trust have  
8 overridden the Trust Agreement, the CRP, the California  
9 Constitution and the California statutes that are in place to  
10 implement its mandate of just compensation.

11 The Fire Victims Trust argues that this new procedure was  
12 approved by this Bankruptcy Court. That is hard to believe,  
13 especially in light of the briefing, hearing, and the  
14 Memorandum Decision on Inverse Condemnation. [Dck. No. 4895.]

15 In its brief in support of inverse condemnation, the  
16 official committee of tort claimants, the progenitors of the  
17 Fire Victims Trust, argued that no statute nor statutory agency  
18 could override the California constitutional requirement of  
19 just compensation. [TCC Brief, Dck. No. 4773, pages 27-28.]

20 The official committee of tort claimants also filed a  
21 response to Adventist Health pre confirmation objection to the  
22 trust documents. At the hearing, and with respect to the  
23 objectors concerns about being treated differently, counsel for  
24 the committee asserted: "The first sentence of the claims  
25 resolution procedure requires the trustee to fairly compensate  
26 claimants in an equitable manner consistent with California law  
27 so I think that resolves the issue." [Transcript, Dck. No.  
28 7416, page 60.]

1       The Fire Victims Trust was not established at the time the  
2 Official Committee of Tort Claimants made the arguments in  
3 support of inverse condemnation and against Adventist Health,  
4 but based on the strong oral and written claims of the TCC this  
5 court could have reasonably expected that when the Trust was  
6 established it would operate within the constitutional  
7 boundaries articulated by the TCC and value claims in  
8 accordance with California law.

9       Yet, a year after these strong arguments persuaded the  
10 court that the Trust documents would be followed, the Fire  
11 Victims Trust, established by the TCC, implemented a  
12 modification or amendment to the CRP that the Trust has used to  
13 eliminate the constitutional compensation requirement for  
14 certain damage claims arising under inverse condemnation.

15       By this amendment, the Trust has taken a position just the  
16 opposite of the earlier position taken by the TCC. The earlier  
17 position being that an agency performing a statutory duty could  
18 not override the constitutional requirement of just  
19 compensation for claims arising under Inverse Condemnation.

20       The new position taken by the Trust, illustrated in the  
21 Trustee's determination, Exhibit "B," is that the Trust's BIL  
22 Eligibility Criteria can indeed override and reduce the  
23 constitutional compensation requirement of California law.

24       This unusual position should be rejected: First: On  
25 procedural grounds because the new or modified procedure was  
26 implemented without the approval of the bankruptcy court as  
27 required by the confirmation order and the Trust Agreement; and  
28 Second: On the merits, the BIL Eligibility Criteria, as

1 designed and applied cannot be used to evaluate claims of  
2 commercial landlords for the taking of leasehold interests by  
3 inverse condemnation.

4 **IV. THE RECORD DOES NOT SHOW THAT THE COURT APPROVED THIS  
MODIFICATION TO THE CRP**

5  
6 The BIL Eligibility Criteria modifies the evaluation  
7 procedure of the CRP in a material way that is inconsistent  
8 with the Trust Agreement and the CRP, both of which require  
9 claims to be evaluated according to California law.

10 California law is abundantly clear as expressed in Article  
11 1, § 19 of the California constitution, the California law of  
12 Eminent Domain, CCP §1230.010, et seq. and California Evidence  
13 Code §§810-824, and most importantly, this court's memorandum  
14 decision on inverse condemnation, incorporated by reference in  
15 the memorandum and decision on plan confirmation, [Dck. No.  
16 8001, page 29], confirms to the parties in this proceeding,  
17 such as the Fire Victims Trust, that claims arising under  
18 inverse condemnation require just compensation evaluated  
19 pursuant to California law.

20 Section II(1)(A) of the amended version of the CRP as  
21 accepted in the confirmation order, provides a list of the  
22 types of real property claims included in the CRP. This list  
23 includes damage to the land and improvements but does not  
24 include leasehold interest. This section further provides that  
25 "real property damages may be measured in one of two ways: (1)  
26 The loss in Fair Market Value to the property (Diminution in  
27 value); or (2) reasonable costs to rebuild or repair the  
28 property."

1       The fact that the listing does not include leasehold  
2 interest is not dispositive. Perhaps it is an oversight or a  
3 drafting error or the list is meant to be illustrative but not  
4 exclusive. CRP Section III supports the idea that the list is  
5 non exclusive because it allows the Trustee and claims  
6 administrator to add categories of recoverable damages.

7       In any event, of the two measures, cost of repairs would  
8 not be applicable to a leasehold interest, whereas diminution  
9 in value is measured by loss of fair market value and would  
10 certainly apply to leasehold interest under California law.

11       In the plan confirmation proceedings this court accepted  
12 the CRP as "highly detailed and sophisticated." Memorandum on  
13 Adventist objections. [Dck. No. 7159, p. 6, line 13.]

14       At the time, there was nothing in the CRP that indicated  
15 to this court that the Trust would not evaluate leasehold  
16 interests in accordance with California law for claims arising  
17 under inverse condemnation.

18       If on the other hand, the CRP actually stated that it  
19 would not value leasehold interests as an interest in property,  
20 this court would likely have found that leasehold interests in  
21 real property receive unequal treatment in violation of 11 USC  
22 §1123(a)(4), or misclassification, § 1122(a).

23       Adding the BIL Eligibility Criteria a year after this  
24 court approved the CRP, modified the CRP in a material way in  
25 that it eliminated the valuation process for leasehold  
26 interests required by California law of Eminent Domain. The  
27 effect of the modification is also material in that it tends to  
28 reduce the fair market value of leasehold interest and deny

1 just compensation as a result.

2 Modifying the CRP by adding the BIL Eligibility Criteria  
3 does not, on its face, indicate to this court or to claimants  
4 that the criteria applies to leasehold interests taken by  
5 inverse condemnation. In fact, just the opposite is suggested  
6 by the rationale the Trust uses to explain the legal basis and  
7 what the criteria is meant to accomplish.

8 On page 1 of the BIL Eligibility Criteria the Trust states  
9 unequivocally that the economic loss rule it is concerned with  
10 is based upon negligence theory.

11 There is no attempt to show how, or even if, the criteria  
12 might be applied to claims arising under inverse condemnation.  
13 Yet, as demonstrated by the Trustee's final determination in  
14 the Sayegh claim, the criteria actually eliminates a claim  
15 based on inverse condemnation, and replaces it with a claim  
16 based on negligence. In this circumstance, the bankruptcy court  
17 should have been informed, and a decision explicitly approving  
18 the criteria obtained before implementation.

19 According to the Bush declaration, he was not able to find  
20 a docket entry confirming the Trust position that the  
21 bankruptcy court approved the criteria for claims arising under  
22 inverse condemnation. Nor did any of the professionals  
23 associated with the Trust respond to the multiple requests,  
24 (Exhibits F, G, H, I and K) by stating the bankruptcy court  
25 approved using the criteria on claims arising under inverse  
26 condemnation. It wasn't until the opening of the appeal  
27 hearing that the Trust for the first time made the  
28 unsubstantiated claim, and then it was too late to address the

1 issue within the CRP.

2 **V. THE BIL ELIGIBILITY CRITERIA SHOULD NOT BE USED FOR CLAIMS  
ARISING UNDER INVERSE CONDEMNATION**

3  
4 The purpose of the BIL Eligibility Criteria as stated in the  
5 introduction is to tailor (i.e., limit) the loss periods in  
6 order to: "account for a specific claimant's losses  
7 attributable directly to the fire and not for the broader  
8 effects of the fire to the economy of the region as a whole."

9 The underlying concern that damage claims could be  
10 improperly affected by post fire conditions in the local  
11 economy could be a sufficient basis for the Trust to implement  
12 procedures to account for the affect on the claims subject to  
13 post fire conditions, such as claims based on negligence.

14 However, that rationale has no application to claims that  
15 are based on inverse condemnation because the post fire local  
16 economy has zero affect on the loss of fair market value  
17 determined as of the day of the fire only.

18 For the authority to engage in this speculative process,  
19 the Trust turned to a recent California Supreme Court case  
20 involving an industrial accident. *The Southern California Gas  
Leak Cases*, 7 Cal.5th 391 (2019), involved a natural gas  
22 storage facility that sprung a leak contaminating the air in a  
23 Los Angeles suburb. There was no property damage but people  
24 became sick and the local government required an evacuation of  
25 the area in the vicinity of the facility, involving  
26 approximately 15,000 people for three months.

27 The evacuation took an enormous toll on the local economy.  
28 Certain local businesses filed suit alleging that the gas

1 company was liable under a negligence theory for the decline in  
2 economic activity causing them identifiable economic loss.

3 The gas company filed a demurrer on the ground that it did  
4 not have a duty to protect against purely economic loss.

5 The trial court overruled the demurrer claiming the law  
6 was uncertain and there is no bar to recovery for purely  
7 economic loss when the precipitating event is a mass tort.

8 The gas company filed a writ with the 2<sup>nd</sup> District Court of  
9 Appeal.

10 The appellate court found that the rule denying recovery  
11 under a negligence theory for purely economic losses without  
12 damage to property, persons or other special relationships is  
13 still the law. The court issued a peremptory writ vacating the  
14 trial courts order and requiring a new order sustaining the  
15 demurrer without leave to amend.

16 On appeal, the Supreme Court affirmed the court of appeals  
17 judgment that the gas company was not liable under a theory of  
18 negligence for purely economic loss.

19 The court took the opportunity presented by the gas leak  
20 case to clarify and set limits on what trial courts can do with  
21 claims of "purely economic loss" arising under a negligence  
22 theory of liability.

23 The problem identified by the court is that purely  
24 economic losses: "proliferate more easily than losses of other  
25 kinds and are not self limiting in the same way." *Gas Leak*  
26 *Cases*, supra 407.

27 But, drawing lines to limit liability on a case by case  
28 basis is beyond the capabilities of the court. Therefore

1 California, like all other jurisdictions that have considered  
2 the problem, will follow the rule that such losses are not  
3 compensable under a negligence theory. The court noted it's  
4 not the best rule but, "it is the least-worst rule out there."  
5 *Gas Leak Cases*, supra 412.

6 While it is not exactly clear just how the gas leak case  
7 supports the Trustee's implementation of the BIL Eligibility  
8 Criteria for cases arising under Inverse Condemnation, it is  
9 certainly clear from the trial court, Appellate Court and  
10 Supreme Court that the problem of purely economic loss occurs  
11 only where liability is based on negligence, not inverse  
12 condemnation.

13 The court approved, rules and procedures for valuing and  
14 paying fire victim claims, are the trust documents which were  
15 given to the Trust when it was established. The court's  
16 confirmation order requires that any material change to the  
17 rules and procedures has to be approved by the Bankruptcy  
18 Court.

19 Moreover, as a general principle of administrative law any  
20 changes the Trust makes to the rules and procedures for valuing  
21 damage claims must be consistent with and not contrary to  
22 controlling law. *Communities for a Better Environment v.*  
23 *California Resource Agency*, 103 Cal.App.4th 98, 109-110 (2002).

24 In bankruptcy proceedings the controlling law is state law  
25 with respect to the substance of damage claims. *Raleigh v.*  
26 *Illinois*, supra, page 20. According to this court's ruling, *In*  
27 *re PG&E Corp.*, 611 B.R. 110, 113, just compensation is  
28 controlling law with respect to the measure of damages to real

1 property interest arising under inverse condemnation. The  
2 Trust Agreement at section 8:16, states California law is the  
3 governing law for evaluating fire victim claims. Thus  
4 California eminent domain/inverse condemnation statutory  
5 procedures are the controlling laws for valuing the damaged  
6 leasehold interests of commercial landlords.

7 Using controlling California law, the commercial landlord  
8 in the Sayegh Brothers' claim determined \$3,307,769.00 is just  
9 compensation for the loss of fair market value of the leasehold  
10 interest.

11 The way the Trust applied the rules of the "criteria" is  
12 shown on page 2 of the Trustee's determination, the effect of  
13 which resulted in reducing the amount of just compensation by  
14 85%, a result inconsistent with and contrary to controlling law  
15 and therefore void. *Mineral Associations Coalition v. State*  
16 *Mining and Geology Bd.*, (2006) 138 Cal.App.4th 574, 589.

17 In the memorandum and decision on inverse condemnation  
18 this court recognized that there are two broad subclasses of  
19 fire victims. Those whose opportunity for recovery is based on  
20 negligence and those whose opportunity for recovery arises  
21 under inverse condemnation. Claims arising under inverse  
22 condemnation are limited to damage to real property interests.

23 Commercial landlords are a specific and discreet group of  
24 claimants within the class of claimants seeking compensation  
25 under inverse condemnation for damage to real property  
26 interests.

27 Leases are recognized as an interest in real property by  
28 California law and subject to the valuation and compensation

1 rules under Article 1, § 19 of the California Constitution, the  
2 California eminent domain law, and California Evidence Code §§  
3 810-824.

4 The real property interest of commercial landlords is the  
5 right to receive lease payments, *Lynbar*, supra, page 876, FN2.

6 The right of commercial landlords to receive lease  
7 payments becomes a constitutional right to receive just  
8 compensation if the leases are taken by inverse condemnation.

9 The loss of fair market value is one element of a claim  
10 brought under inverse condemnation. A claimant may also  
11 recover interest from the day of the taking, (the fire) as well  
12 as reasonable costs and attorney fees.

13 The Trustee's determination of the appeal shows that the  
14 damage award for a commercial landlord's leasehold interest  
15 does not include reasonable attorney fees, nor any interest  
16 from the day of the loss. And the loss itself is not based on  
17 the loss of fair market value. And, finally, the amount of  
18 compensation that was left after the Trust applied the  
19 eligibility criteria was 15% of the amount of the just  
20 compensation claimant established by the statutory procedure,  
21 Evidence Code §§ 817, 819.

22 The Trustee's determination demonstrates that commercial  
23 landlord's property claims for damage to leasehold interests  
24 are subject to a valuation system created by the Trust for  
25 claims based on negligence, that is inconsistent with and  
26 contrary to controlling law of just compensation. And there is  
27 nothing in the record that shows the court approved this  
28 amendment to the CRP.

1        In response to Sayegh Brothers' request for clarification,  
2 the Trustee and claims administration stated "We must  
3 consistently apply the provisions of the Fire Victims Trust  
4 Agreement, claims resolution procedure, and Eligibility  
5 Criteria to all claims and claimants." Exhibit J

6        **(B) Bankruptcy Court has discretion to grant relief  
requested.**

7  
8        The actions of the Fire Victims Trust as described herein  
9 are inconsistent with and contrary to orders and rulings of  
10 this court.

11        In the first instance and with respect to the confirmation  
12 order, this court should clarify when and in what proceeding it  
13 approved of the "Criteria" being applied to claims arising  
14 under inverse condemnation

15        The Trust has been less than transparent in explaining why  
16 leasehold interest of commercial landlords are being treated as  
17 if they are subject to liability under a negligence theory,  
18 instead of liability under inverse condemnation.

19        Thus it is appropriate and necessary to clarify what the  
20 orders and rulings the court has made with respect to valuing  
21 claims.

22        A bankruptcy court has inherent power to interpret and  
23 enforce its own orders. *Travelers` Indemnity Co. V. Bailey*,  
24 557 U.S. 137 (2009).

25        Bankruptcy courts have additional authority under § 105(a)  
26 to issue any order, process or judgment necessary to carry out  
27 the provisions of the Bankruptcy Code, and this is especially  
28 important for determining the effect of the confirmation order

1 on creditors and interested parties. *In Re Gonzales*, 512 B.R.  
2 255, 258-259 (BK C.D. CA 2014)

3 This court's order on the applicability of inverse  
4 condemnation states it is a constitutional doctrine that  
5 requires "just compensation" for a property interest taken for  
6 a public purpose. The court made a point of distinguishing  
7 liability of inverse condemnation from liability based on  
8 negligence. They are different legal theories of liability.

9 Seven months after the ruling on inverse condemnation, the  
10 court returned to the significance of liability in its ruling  
11 on the various objections to confirming the debtor's plan. One  
12 objection raised by an individual victim claimed that debtors,  
13 "impermissibly classified fire victims in different classes."  
14 Arguing that all victims were victims of debtor's fires, and  
15 should be in one class.

16 In overruling the objection, the court agreed with debtor  
17 that separate classes were necessary because some claims "are  
18 based on different legal theories of liability." [Memorandum  
19 Decision Dck. No. 8001, p27.]

20 Thus, by the time the Fire Victims Trust was established,  
21 this court had ruled that liability under inverse condemnation  
22 would apply to claims involving damage to real property  
23 interest. Furthermore, liability under inverse condemnation is  
24 fundamentally different than liability under a negligence  
25 theory and that claims based on different legal theories of  
26 liability should not be in the same class for treatment under  
27 the plan.

28 However and in spite of the constitutional requirements of

1 just compensation, confirmed by this court's ruling, the  
2 Trustee and claims administration have implemented a claims  
3 valuation procedure designed specially for negligence based  
4 claims and have applied it to "all claims and claimant" thereby  
5 denying commercial landlords the right to just compensation for  
6 their loss.

## **CONCLUSION**

8       Based on the foregoing we ask the court to exercise its  
9 discretion under 11 U.S.C. § 105(a) and order the Trust to  
10 recalculate and pay, according to California Eminent Domain  
11 law, the claims of commercial landlords for leasehold interest  
12 originally subjected to the Eligibility Criteria.

13 | Respectfully submitted.

14 DATED: February 13, 2024.

MTCHAEL R. BUSH